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January 28, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

Re: Federal-State Joint Board on Universal Service
CC Docket No. 96-45

Dear Madam Secretary:

We write on behalf of U.S. Cellular Corporation ("USCC"), to respond to the *ex parte* presentation of Fred Williamson & Associates, Inc. ("FWA"), filed with the Commission on January 7, 2004 in the above-captioned proceeding ("FWA *ex parte*").

Although the bulk of FWA's presentation was directed at responding to the petition for rulemaking filed by Western Wireless Corporation ("WWC") requesting removal of rate of return regulation for rural Incumbent Local Exchange Carriers ("ILECs"), FWA directed several well-worn arguments at USCC, including some that have been consistently rejected by both this commission and numerous states. In response, we provide a brief response to some of the more flawed arguments so as to assist the Commission in developing policies that promote benefits for rural consumers rather than benefits for a particular class of carrier.

I. Cost-Based Support

FWA's argument that each class of carrier should receive support based on its own costs would create uneconomic incentives for all carriers. Because the current system provides competitive ETCs with support only when they get a customer, competitors now have a strong incentive to become efficient and drive down costs and prices in their efforts to win and keep customers. FWA apparently would have competitors receive funding for all network construction, regardless of whether it makes economic sense to build in the new areas. As such, USCC can imagine no system more certain to balloon the high-cost support mechanism and ensure that inefficient investments will be made in rural areas. The premise, that paying carriers on their own costs will reveal that wireless carriers don't "need" support, quickly breaks down if one looks beneath the surface of FWA's very cursory analysis.

A. The 'Analysis' of USCC's Annual Report Provides the Commission With No Useful Information.

As we understand FWA, selected numbers dealing with overall costs and expenditures included in USCC's 2002 Annual Report for December 31, 2002 can be added, and then divided by total lines served to arrive at a per line amount of revenues, which when compared with USCC's annual revenue per line, "proves" that support is not needed. This 'analysis' borders on absurd.

For eight years now, this Commission has properly set a course to level the playing field in rural areas for all carriers by providing high-cost support that is sufficient, explicit, and portable so as to encourage network infrastructure development in high-cost areas. The data presented in FWA's *ex parte* applies to USCC's current network, which has been constructed in different kinds of areas, including those considered relatively low-cost by the FCC. In that sense, it is accurate – USCC does not "need" high-cost support to construct networks in Chicago, or any other metropolitan area which it currently serves. Nor does it require support to construct facilities in the low-cost portions of its rural service areas. All of these areas are going to be constructed – hopefully in a profitable way – without high-cost support.

But data pertaining to networks in low-cost areas is not what this proceeding is about. This proceeding is about whether USCC and other present and future ETCs will extend their networks into high-cost areas ***to provide rural consumers with the same kinds of choices in telecommunications services as are today available in urban areas***. It is also about using high-cost support to improve network quality for competitive ETCs in rural areas to a level that is comparable with networks operating today in urban areas, where wireless substitution is advancing.

Thus, the data presented by FWA concerning USCC's cost of providing service in low-cost areas is completely irrelevant to the question whether USCC or any wireless carrier has an opportunity to enter high-cost areas to provide consumers with a choice of telecommunications carriers. If there were such an opportunity without support, rural consumers would today have the same high-quality networks that are available in urban areas, ***throughout the rural wireless carriers' service areas.***

B. Providing Support to Competitive Carriers on a Per-Line Basis Will Incent Carriers to Invest While Limiting Growth of the Fund.

FWA's statements that support to each class of carrier should be based on its own costs contradicts its professed concern about growth of the high-cost fund. In order to ensure competitive neutrality, any method for providing high-cost support based on competitors' costs would allow a competitor to earn a sufficient return or investment, similar to that currently in place for rural ILECs.

Paying each carrier on its own costs will cause competitors to do the same thing that rural ILECs do today: construct facilities in areas knowing that the underlying universal service system will provide a return, irrespective of the prospects for consumer success. If competitors are rewarded with the same system, which provides no incentive to make efficient investments, the result is sure to be more networks than a market can support, plenty of stranded investment in the long run, and a steep increase in high-cost support funding requirements.

Over the past several years, the Commission has carefully sought to provide incentives for the right level of facilities to be constructed in rural America. The per-line methodology for competitive ETCs, which was carefully considered, is a self-correcting mechanism that ensures that competitors undertake the proper level of network construction which can be sustained by customer revenue and support.

To illustrate, if there are only enough consumers to support two networks, then the per-line methodology does not permit a third network to be constructed. There will be varying levels of network construction in any rural area – more in densely populated areas and less in more remote areas. If there are five ETCs and the more remote areas will only support two networks, then three ETCs are going to have to provide service through resale in order to meet their obligation to respond to all reasonable requests for service. Since resale does not generate support, consumers in remote areas may have many choices of service plans, equipment and calling options, from a number of ETCs, all of which run over two facilities-based networks.[1]

In sum, the Commission's current system, wherein support to competitors is portable and dependent upon having a customer, then all carriers must construct facilities to capture support and each becomes customer-centric, which is exactly the appropriate incentive to place upon service providers. The very real risk of investing in facilities that will not generate sufficient revenue and support will curtail inefficient investment. The public is served by enabling competitors to drive innovation and quality of service, rather than having it imposed by regulators.[2]

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[1] Because resale does not generate support for the reselling carrier, it has strong incentive to construct network facilities to serve consumers wherever possible.

[2] We recommend to the Commission a review of work performed by Mr. Don J. Wood of Wood & Wood, included with the comments and *ex parte* presentations of the Alliance of Rural CMRS Carriers ("ARCC") in this proceeding. There, Mr. Wood sets forth a detailed and compelling case for the provision of per-line support to competitive carriers as a means of limiting growth of the fund, driving infrastructure development in rural areas, and advancing the universal service goal of providing consumers with the benefits of advanced services as intended by Section 254 of the Act. A copy is enclosed for the Commission's convenience.

C. The Statement that Wireless ETCs are Obtaining a 'Windfall' Under the Current System is Completely Unsupported.

Generally, competitors operate young networks that will require many years of intensive investment to raise the network service quality to the level of the incumbent. Customer growth is high. Yet, in virtually every case, the incumbent who operates a mature, slow-growing network receives far more dollars than the newcomer. The concept of windfall as used by FWA implies that funds are not being used as required by law. Again, FWA provides no data in support.

Under the rules, all support funds which go to the 'bottom line' of an income statement, must be moved to the balance sheet, *i.e.,* invested into network facilities and services for the benefit of high cost areas. USAC's web site is replete with examples of competitive ETCs receiving a small fraction of the support currently being provided to rural ILECs serving the same area. A competitive ETC must take on the business risk of constructing facilities, advertising services, and obtaining a sufficient number of customers to generate enough revenue and support to make the investment work.

If rural ILECs believe a windfall would result from competitors receiving support for serving low-cost areas, any such possibility is completely within the control of rural ILECs to eliminate. The 2001 *RTF Order* gave rural ILECs the opportunity to disaggregate support so that competitors do not receive support in the low-cost portions of ILEC service areas.[3] If a competitive ETC is designated, affected ILECs may petition to re-submit a disaggregation plan to properly allocate support to high-cost areas.[4] There is no windfall and carriers that do not invest in the communities where they are designated should not be permitted to be ETCs.

We are constrained to note that data submitted by FWA reveal that ILEC monthly revenue per access line in Kansas and Oklahoma is $120.00 and $125.00, respectively. In each case a substantial portion of that revenue is either explicit support from state or federal mechanisms or is buried within rates. And these figures do not appear to include optional vertical features such as call waiting or caller ID, which are close to 100% profit. USCC wonders what public policy ILECs believe to be served by promoting a system that sustains an inefficient carrier and restrains a more efficient carrier from entering, especially if the more efficient carrier will ultimately require less support to provide service.

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3 *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 (2001) ("*RTF Order*").

4 *See* 47 C.F.R. §§ 54.315(b)(4); (c)(5); (d)(5).

II. FWA's Arguments on Affordability and Local Usage Have Been Properly Rejected by this Commission[5] and Numerous States.

Perhaps most obvious about FWA's criticism concerning affordability is that it overlooks the fact that if consumers did not find USCC's service affordable, they would select an alternative and USCC would forfeit revenue and support. Among other states, the Washington Utilities and Transportation Commission recognized:

> Price is an essential element of competition. Customers will choose to take service from RCC if the price is right, and will not do so if it is too high. If no customers choose its services, then RCC will not receive federal universal service support. . .[6]

Consumers of wireline local exchange service in many rural areas have relatively few choices. For example, if a customer desires a local calling area throughout the state – or a multi-state region, or the contiguous United States – it is not available. If a customer desires to make "intra-LATA" calls, that customer must pay toll, which includes substantial access fee subsidies to ILECs. If a customer wishes to place or receive a call from anywhere other than the end of the telephone plant, the customer will be unable to do so. USCC, like most every wireless carrier, has a broad array of rate plans designed to serve almost any consumer's needs.

When wireline rate structures are examined, it is readily apparent why the public would not be served by attempting to fit competitive service provider offerings into categories created by ILECs and state regulators. In most cases, wireline carriers offer a heavily subsidized 'base rate' that provides unlimited local calling within a single exchange. Often, the base rate enables a caller to access only a few thousand, or even a few hundred phones free of additional charge. USCC is aware of one case in New Mexico where an ILEC testified that its base rate provided unlimited 'free' calling to only 249 other phones. Intra-LATA toll charges in rural areas are often over $0.25 per minute. CLASS features, such as call waiting, caller ID, extended area service, and call forwarding are offered separately and are not price-regulated.

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5 *See Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia,* CC Docket No. 96-45, FCC 03-338, *Memorandum Opinion and Order* at ¶ 20 (rel. Jan. 22, 2004).

6 RCC Minnesota, Inc., Docket No. UT-023033 (WUTC Aug. 14, 2002) ("RCC Washington Order"), at pp. 14-15. *See also* ALLTEL Michigan Order, *supra,* at p. 12 (". . .[T]he Commission finds sufficient protection for customers in their right to choose not to use wireless service and to choose from whom to take service."); U.S. Cellular Corporation, Docket No. UT-970345, Third Supplemental Order (WUTC 2000) at para. 43 (" The fact that its competitors receive universal service support puts USC at a disadvantage in its ability to make cellular technology more widely available at competitive prices. Allowing USC to receive universal service support increases the likelihood that cellular technology will become available to more rural consumers at an affordable price.").

FWA's characterization of USCC's rate plans is, predictably, biased. They selectively quote from USCC's rate plans, omitting important features and information, and they distort or ignore the features that wireless delivers to consumers, such as mobility or wider local calling areas, which consumers of all income levels obviously value. A fair examination of wireless rates reveals that they are affordable, and with over 150 million consumers using wireless it borders on absurd to suggest that Americans cannot afford wireless service.

To cite three examples from USCC's rate plans:

- If a consumer wishes to make 1400 anytime minutes of local calling on USCC's network (more than the nationwide average of 1200 voice minutes per month) it can do so for a price of $50.00 and will receive a local calling area far larger than that of any Oklahoma ILEC encompassing hundreds of thousands of numbers. For just $4.95 more ($0.0033 per minute), the consumer may purchase an additional 1500 night and weekend minutes. For that price, the phone provides the substantial health and safety benefits of mobility and vertical features not included in ILEC rates. Many small business users can move within USCC's network and stay connected without the use of pay phones.

- For consumers who want the convenience and safety of mobility and do not use their phone a great deal, they may purchase access for as little as $25.00 per month, again with a much larger local calling area, mobility, and additional CLASS-type features that are not included in ILEC rates.

- A mobile professional may choose a rate plan that offers a local calling area that includes the continental United States. For $200.00, hundreds of millions of numbers are local and the phone may be used across the country. As any professional person knows, the cost of using hotel phones, pay phones, and the inconvenience of the wireline network make this option compelling on many levels, not the least of which is price.

Most wireline subscribers would incur substantial toll charges to reach the vast majority of lines covered by USCC's smallest local calling area. Given that the average revenue per subscriber for rural wireline carriers is approximately $60 to $90 per month (higher in Kansas and Oklahoma), that figure is far more relevant in comparing wireline to wireless service offerings.[7]

ILECs have argued this issue both ways. In some proceedings they have alleged that competitive ETCs will have an incentive to lower prices so as to maximize support. USCC is not

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[7] *See* MICHAEL J. BALHOFF, THE RLEC MONITOR • VOLUME 6 (Winter 2003) (quarterly report published by Legg Mason Wood Walker, Inc., including regulatory commentary by the National Exchange Carrier Association).

aware of any carrier that has artificially lowered prices below cost or otherwise 'gamed' the system. Competitive ETCs have not been able to engage in predatory pricing because in a competitive marketplace they have no ability to do so.[8]

As for local usage, USCC can only speak for itself in stating that it receives no complaints from consumers that it does not deliver sufficient local usage. USCC delivers a wide variety of local usage throughout its rate plans so that consumers may choose the amount of local usage that suits their needs. As shown above, a consumer can have 2900 minutes of usage, roughly twice the average household's needs, for $55.00, which includes a calling area that is far larger than any competing ILEC, mobility, CLASS features included and more.

USCC does not offer a rate plan that mimics the ILECs' fixed offerings, simply because it chooses not to compete for service that ILECs provide. If a consumer prefers a phone tethered to the wall that provides unlimited calling to a very small local community, then they are better off with a wireline phone – and they have that choice.[9] But USCC can understand no public policy benefit in forcing a competitive carrier to duplicate the offerings of an incumbent, especially when a competitor uses a different technology. It would likewise be poor public policy to require ILECs to expand their local calling areas or offer mobility. Better to end the wireline monopoly and then deregulate wireline rates and practices so that consumers can benefit from competition.

III. FWA's Statements About Network Quality Make the Case for Promoting Entry By Competitive ETCs.

FWA claims that "[i]ntermodal competition exits, but this competition does not provide <u>quality</u> basic service to all consumers. There are major areas where service is not provided, and

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[8] *See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order,* 9 FCC Rcd 1411, 1421 (1994) ("*CMRS Second Report and Order*") ("Competition, along with the impending advent of additional competitors, leads to reasonable rates. Therefore, enforcement of Section 203 is not necessary to ensure that the charges, practices, classifications, or regulations for or in connection with CMRS are just and reasonable and are not unjustly or unreasonably discriminatory"); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order,* 85 FCC 2d 1, 31 (1980). The D.C. Circuit recently upheld the FCC's policy in this regard, holding that Verizon Wireless' practice of negotiating service terms with individual customers was not unjust, unreasonable or discriminatory in violation of the Act, finding, "neither Verizon nor any other CMRS provider is dominant" in the relevant market, "[c]ustomers dissatisfied with Verizon's charges or service may simply switch to another provider." Thus, the Court concluded, the negotiating process "allows consumers to get the full benefit of competition by playing competitors against each other." *Orloff v. FCC,* No. 02-1189, slip op. at 8-9 (D.C. Cir. Dec. 23, 2003).

[9] As the WUTC properly found, "We have declined to make a determination of a particular amount of local usage that is acceptable. Customers can choose for themselves if the amount of local usage is worth the price." RCC Washington Order, *supra* at pp. 14-15

even where service is provided, calls are frequently dropped and service quality is poor (static, one party can hear but the other party can't, etc.)."[10] FWA also attaches coverage maps, apparently developed from information available on the FCC's tower data base, attempting to demonstrate that USCC's coverage in rural areas is inadequate.[11]

As USCC understands these statements, FWA is simultaneously claiming that: (1) wireless is competing with wireline networks; and (2) wireless networks are not of sufficient quality to provide competitive service. As many state commissions have confirmed, wireless carriers are competing with each other and competing with wireline companies for second lines and ancillary services. However, these are not the markets at issue. In the market for primary service, wireless networks in many rural areas do not have sufficient network quality to compete with mature wireline networks that have been subsidized for decades. For example, as an Administrative Law Judge stated in recommending the designation of Midwest Wireless, LLC as an ETC in Minnesota:

> Although Midwest Wireless has been successful in obtaining conventional cellular customers, it does not currently compete for basic local exchange service. Designation of Midwest as an ETC would provide the support necessary to allow Midwest to provide the BUS service and to enhance its network so that it can compete for basic local exchange service with both its BUS and conventional cellular offerings. Competition would benefit consumers in southern Minnesota by increasing customer choice (from no choice in most areas to more than one) and providing new services made possible by wireless technologies (mobility, numeric paging, text messaging, voice mail, caller ID, call waiting, three-way calling, call forwarding, etc). In addition, competition would benefit rural consumers by allowing them to choose service, as do consumers in urban areas, based on size of local calling area, amount of local calling, price, service quality, customer service, and service availability. It would allow consumers increased access to emergency services. Designation of Midwest Wireless as an ETC would also facilitate universal service to the benefit of rural consumers by creating incentives for both competitors and incumbents to make infrastructure investments that should ensure that quality services are available at just, reasonable, and affordable rates.[12]

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[10] FWA *ex parte* at p. 1 (emphasis in original, footnote omitted).

[11] As they appear on the Electronic Comment Filing System, FWA's exhibits are somewhat disorganized. Although the attachments do not directly correlate with the text references, we presume that the maps of USCC's coverage in Oklahoma are intended to be associated with these statements.

[12] Midwest Wireless Communications, LLC, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT6153/AM-02-686, Findings of Fact, Conclusions of Law, and Recommendation (Minn. ALJ Dec. 31, 2002) ("Midwest Minnesota ALJ Decision") at para. 37, aff'd by Minn. PUC March 19, 2003 ("Midwest Minnesota Order"). *See also* United States Cellular Corp., et al., Docket No. UT-970345, Third Supplemental Order Granting

USCC's offerings are competitive with wireline carriers for primary service in every place where its network is sufficiently developed to provide such competition. With few exceptions, those places are low-cost areas. In high-cost areas, USCC has applied for ETC status so as to have the opportunity to use high-cost support to improve its networks so that consumers there have an opportunity to choose USCC as their primary carrier. Thus, USCC agrees with FWA's proposition that, as a general matter, wireless network quality in high-cost areas must be improved to advance universal service and be competitive. That state of affairs in rural America is precisely why wireless carriers are seeking ETC status. When one carrier has a mature network, all of the customers, and all of the support, no competitor is capable of constructing a competitive network to enter the market.[13] If a competitor could enter rural America without support, it would have happened decades ago and rural ILECs today would not be monopolies.

FWA speculates that intermodal competition from wireless will not provide quality basic and advanced service to all rural consumers.[14] As we read *Alenco,* that judgement is not for FWA, or even the FCC, to make. Support is intended to be sufficient for consumers, not set aside for any one technology.

> The Act does *not* guarantee all local telephone service providers a sufficient return on investment; quite to the contrary, it is intended to introduce competition into the market. Competition necessarily brings the risk that some telephone service providers will be unable to compete. The Act only promises universal service, and that is a goal that requires sufficient funding of *customers,* not *providers.* So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.[15]

The high-cost mechanism is intended to provide sufficient support to high-cost areas so that consumers are free to choose the provider that best delivers the supported services. Thus, if

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Petition for Designation as Eligible Telecommunications Carriers (WUTC Jan. 27, 2000) ("USCC Washington Order"), *aff'd. sub nom. Wash. Indep. Tel. Assn. v. WUTC,* 65P.3d, 319 (2003); United States Cellular Corporation, 8225-TI-102 at p. 8 (Wisc. PSC Dec. 20, 2002) ("USCC Wisconsin Order"); Alaska DigiTel, LLC, Docket U-02-39, Order No. 10 at pp. 1-2 (Reg. Comm'n of Alaska, Aug. 28, 2003) ("ADT Alaska Order"); RCC Minnesota, Inc. et al., Docket No. 2002-344 at p. 9 (Maine PUC May 13, 2003) ("RCC Maine Order").

13 *See Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934,* 15 FCC Rcd 16227, 16231 (2000) ("Further, we believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price.").

14 *See* FWA *ex parte* at p. 1.

15 *Alenco Communications, Inc. v. FCC,* 201 F3d 608, 620 (5th Cir. 2000).

FWA is correct that in some areas wireless service cannot provide quality services, then consumers will not choose wireless and carriers will not get support. In other areas, where wireless does deliver quality services, then consumers may choose wireless and carriers who deliver quality service will receive support as a result.

Respectfully submitted,

/s/

David A. LaFuria

Enclosure

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